

**THE OFFICE OF REGULATORY STAFF**

**DIRECT REHEARING TESTIMONY**

**OF**

**STEVEN W. HAMM, ESQ**

**AUGUST 16, 2018**



**DOCKET NO. 2017-292-WS**

**Application of Carolina Water Service, Incorporated for  
Approval of an Increase in Its Rates for Water and Sewer  
Services**

BEFORE  
SOUTH CAROLINA PUBLIC SERVICE COMMISSION  
  
DIRECT TESTIMONY OF STEVEN W. HAMM, ESQ.

1 **Q: PLEASE STATE YOUR NAME, OCCUPATION AND BUSINESS ADDRESS**  
2 **FOR THE RECORD.**

3 A: My name is Steven W. Hamm. I am an attorney with the law firm of Richardson, Plowden  
4 & Robinson which is located at 1900 Barnwell Street, Columbia, South Carolina 29201.

6 **Q: ON WHOSE BEHALF ARE YOU PRESENTING TESTIMONY IN THIS**  
7 **PROCEEDING?**

8 A: I am presenting testimony on behalf of the Office of Regulatory Staff.

10 **Q: PLEASE PROVIDE A SUMMARY OF YOUR EDUCATIONAL BACKGROUND**  
11 **AND EXPERIENCE.**

12 A: I received a BA degree in Political Science from the University of California at Santa  
13 Barbara in 1971. I was a public school teacher in Sumter, South Carolina from 1971 to  
14 1974. I received a Juris Doctor degree from the University of South Carolina School of  
15 Law in 1977. I started as a law clerk at the South Carolina Department of Consumer Affairs  
16 ("DCA") while in Law School in 1976. Upon graduation from Law School I started as a  
17 Staff Attorney at DCA in 1977. I was named as the Division Head and Deputy Consumer  
18 Advocate of the new legislatively created Consumer Advocacy Division of DCA in 1978.  
19 I started arguing my first regulatory cases before the Public Service Commission in August  
20 1978. I was appointed by the South Carolina Commission on Consumer Affairs as the  
21 Administrator and State Consumer Advocate of the South Carolina Department of  
22 Consumer Affairs in September of 1981. I continued to serve as Administrator and  
23 Consumer Advocate at Department of Consumer Affairs until 1994 when I resigned to run  
24 for state public office. I joined Richardson, Plowden & Robinson, PA as a shareholder in  
25 the fall of 1994. I started the firm regulatory, administrative and legislative practice group  
26 and remain active in that practice area. I have actively participated in close to \$3 billion in  
27 regulatory and civil cases over my 40 plus year legal career.

29 I have been an active regulatory, administrative and appellate lawyer since 1977. I have  
30 participated and argued administrative and regulatory cases before the former South  
31 Carolina Dairy Commission, many cases before the South Carolina Public Service  
32 Commission, the South Carolina Department of Insurance, and before other South Carolina  
33 administrative agencies. I have appeared before the Georgia Department of Insurance as  
34 well as legislative committees in South Carolina, North Carolina, Georgia, Iowa and  
35 Indiana as well as before congressional committees in Washington, DC.

37 I have been very active as an appellate attorney for many years in state and federal appellate  
38 courts. I am a member of the South Carolina Bar, the Federal District of South Carolina,  
39 the Fourth Circuit Court of Appeals, the DC Court of Appeals and the United States  
40 Supreme Court. I won my first appellate case before the SC Supreme Court in 1979 in a  
41 case against the SC Dairy Commission. There are a number of reported South Carolina  
42 Supreme Court case decisions that include my name in the case title.

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1 I also developed an active practice in the areas of voting and election challenges. I have  
2 represented towns and municipalities in contested election disputes. I have also represented  
3 members of the General Assembly and individual citizens in challenges to election results  
4 addressing the actions of state officials responsible for conducting a lawful election. I was  
5 successful in over turning two county wide election results that required that new special  
6 elections be set by the Governor. In both of those cases my clients were elected to office  
7 in the special election.  
8

9 I was asked by the State Ethics Commission to take leave from my law firm in February  
10 2017 to serve as the Interim Executive Director of the Ethics Commission until a new  
11 Executive Director was recruited and appointed by the Commission as the new Executive  
12 Director. I served at the Ethics Commission for slightly more than a year until I left in  
13 March of 2018.  
14

15 **Q: WHAT DID THE OFFICE OF REGULATORY STAFF ASK YOU TO DO IN THIS**  
16 **PROCEEDING?**

17 **A:** I was asked to review the Prefiled Revised testimony and Exhibits of Keith M. Babcock  
18 filed on behalf of Carolina Water Services, Inc. ("CWS") and provide testimony to the  
19 Commission on the substantial regulatory policies that should be addressed and applied by  
20 the Commission.  
21

22 **Q: ARE YOU FAMILIAR WITH MR. BABCOCK'S BACKGROUND AS A LAWYER**  
23 **IN SOUTH CAROLINA?**

24 **A:** Yes. I have known Mr. Babcock for many years. I have a great deal of respect for his  
25 personal integrity and his legal work and experience during his long career as a lawyer.  
26

27 **Q: ARE YOU FAMILIAR WITH THE INDIVIDUAL LAWYERS AND LAW FIRMS**  
28 **REFERENCED IN HIS TESTIMONY?**

29 **A:** Yes. I know most of the individual lawyers and law firms referenced in his Appendix B  
30 Exhibit. The individual lawyers and firms are known and respected for their strong  
31 advocacy on behalf of their clients. They are quality lawyers and firms. I do not object to  
32 the hourly rates paid by CWS. I do not agree that all of the listed legal expenses should be  
33 included by the Commission in rates paid by CWS customers.  
34

35 **Q: PLEASE EXPLAIN YOUR POSITION TO THE COMMISSION.**

36 **A:** The Commission must first determine if any legal expenses requested serve to benefit  
37 ratepayer or company stockholders. Just because the hourly legal rates paid by a regulated  
38 entity could be considered "reasonable" in the legal services market place in South Carolina  
39 does not mean that the Commission should include all those legal expenses when setting  
40 and approving rates and charges to be imposed on CWS customers. A decision addressing  
41 "reasonable" must come after a decision by the Commission that the legal expenses in  
42 question benefit ratepayers.  
43

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1 **Q: WHAT IS YOUR CONCERN ABOUT THE LEGAL EXPENSES THAT CWS**  
2 **SEEKS TO RECOVER?**

3 A: First, I believe that CWS should clearly and specifically state the public policy factors and  
4 evidence that served as a basis for seeking its requested legal expenses in rates paid by  
5 customers of CWS. CWS did not provide sufficient information in supporting evidence as  
6 to why ratepayers should be required to pay any of those legal costs and expenses.  
7

8 **Q: CAN YOU POINT TO A SPECIFIC EXAMPLE OF THE REGULATORY POLICY**  
9 **ISSUE THAT THE COMMISSION SHOULD APPLY WHEN MAKING A**  
10 **DECISION ON THE CWS LEGAL EXPENSES INCLUDED IN MR. BABCOCK'S**  
11 **TESTIMONY?**

12 A: Yes. The Commission should first determine if ratepayers were the primary beneficiary of  
13 any CWS legal expense. The Commission would then need to specify the PSC Regulatory  
14 Policy and all related factors that were applied in reaching a conclusion that would justify  
15 CWS Ratepayers being required to pay for any of the CWS legal expenses associated with  
16 a condemnation proceeding. State Law provides specific statutory authority for CWS to  
17 obtain reasonable financial compensation for the owners of CWS and State Law also  
18 provides authority for CWS to recover reasonable legal expenses in a proceeding where  
19 CWS prevails. Those condemnation legal issues are driven by the economic interests of  
20 the owners of CWS and not the economic interests of CWS ratepayers.  
21

22 At the time I prepared my testimony, the condemnation process to establish reasonable  
23 compensation for the I-20 facility was not complete or final nor had there been any ruling  
24 on any legal fees that CWS might be authorized to recover due to the condemnation of the  
25 I-20 facility. Given all of these factors, at the very least, the Commission should establish  
26 a regulatory account for later consideration after the entire condemnation proceeding is  
27 final and no longer subject to appeal.  
28

29 **Q: CAN YOU PROVIDE THE COMMISSION WITH AN EXAMPLE WHERE THE**  
30 **ULTIMATE LEGAL COSTS WERE NOT UNDERTAKEN TO ADVANCE THE**  
31 **INTERESTS OF RATEPAYERS?**

32 A: Yes. I have examined the original federal court CWS Order dated March 29, 2017 issued  
33 by Judge Seymour in Civil Action Number 3:15-cv-00194-MBS. The Commission is  
34 responsible for establishing and approving rate and charges that are reasonable and support  
35 lawful operations. Judge Seymour was confronted by a law suit which claimed that CWS  
36 exceeded its established effluent discharge limitations on multiple occasions. CWS was  
37 not successful in dismissing these claims and Judge Seymour ultimately imposed a \$1,000  
38 fine for each of the 23 violations of applicable effluent limitation. Why should CWS rate  
39 payers pay any of the legal defense costs when CWS was unable to prevail on its defense  
40 of effluent discharge claims? CWS rate payers would not be responsible for the financial  
41 penalty imposed by Judge Seymour. As a result, none of the legal costs associated with  
42 defending a losing claim should be imposed on CWS ratepayers as well.  
43

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**Q: WHAT IS THE LEGAL BASIS FOR YOUR RECOMMENDATION TO THE COMMISSION TO NOT ALLOW RATE PAYERS TO BEAR THE LEGAL COSTS ASSOCIATED WITH CWS 23 EFFLUENT DISCHARGE VIOLATIONS?**

A: My position is based on several factors. First, CWS did not specifically establish the factual basis and legal factors it applied in seeking to recover the contested legal fees and expenses. With regard to the legal expenses associated with the effluent discharge violations in Federal Court, Judge Seymour ruled against CWS. The fact that the \$1.5 million penalty initially set by Judge Seymour has been vacated and will be heard in a separate proceeding remains irrelevant as to CWS efforts to recover any of those related expenses. The Commission has previously indicated that ratepayers should not be responsible for operating penalties incurred by regulated utilities resulting from violations of other regulatory standards. Why should CWS ratepayers pay any CWS legal expenses that were incurred to defend or reduce penalties levied against CWS when ratepayers are not responsible for paying those penalties in the first place? CWS is attempting to recover legal expenses indirectly in a situation where it could not directly recover those expenses in the first place.

**Q: WHAT OTHER FACTORS DID YOU CONSIDER IN YOUR RECOMMENDATION TO THE MEMBERS OF THE PUBLIC SERVICE COMMISSION?**

A: The South Carolina Supreme Court reversed a decision made by the Public Service Commission many years ago. The policy addressed in that decision applies to the issues under consideration in this proceeding. In Hamm v. PSC and CP&L, 291 SC 1190, 352 S.E.2d 476 (1987), the Supreme Court ruled that the Commission had improperly allowed CP&L to recover almost \$1 Million in electric generation fuel costs resulting from an Order from the Nuclear Regulatory Commission ("NRC") directing CP&L to shut down a nuclear generating facility. The NRC forced CP&L to shut down the nuclear generating facility because it failed to properly install approximately 96 seismic pipe supports in that nuclear station. The NRC order to shut down the nuclear station caused CP&L to spend almost \$1M more in fuel than would have been spent during the same period had the nuclear unit not been shut down. The Court noted that if a utility was authorized to pass such costs on to its customers, it would have "no incentive to minimize" costs. The same regulatory principal and policy applies in this proceeding. The Commission should consistently enforce a policy of directing utilities to minimize costs and violations of the law and when a utility fails to demonstrate to the Commission that it took every reasonable step to avoid those violations and costs, such resulting costs and expenses will not be paid for by ratepayers.

**Q: HAVE YOU EXAMINED ANY OTHER RULINGS IN PREPARING YOUR TESTIMONY?**

A: Yes. I came across a decision issued by the North Carolina Supreme Court that I believe is directly relevant to the matters now before the Commission. In State ex. rel. Utilities Comm'n v. Pub. Staff, N. Carolina Utilities Comm'n, 317 N.C. 26, 343 S.E.2d 898 (1986),

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1 the North Carolina Supreme Court reversed a decision by the North Carolina Utilities  
2 Commission that allowed inclusion of utility legal fees in approved operating expenses  
3 resulting from the utility contesting the dollar amount of a penalty that had been assessed  
4 for failure to provide adequate service. The North Carolina Supreme Court noted that the  
5 utility fees in question came as a result of the Utilities failure to provide adequate water  
6 services in the first place. The North Carolina Supreme Court concluded it would be  
7 improper to require ratepayers to pay for any utility penalties through the inclusion of  
8 penalty related legal fees in the utility's regulated expenses. The North Carolina decision  
9 provides a broad overview of the regulatory treatment of legal fees by regulators across the  
10 United States and merits review by the Commission.

11  
12 **Q: Does this conclude your testimony?**

13 **A: Yes.**